IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO.2147 OF 2004

IN

MISC.PETITION NO.58 OF 2001

...

SICOM Ltd. ...Petitioner

v/s.

Lav K. Chadha & Ors. ...Respondents

...

Mr.P.V.Shah for the Petitioner.

Mr.Sanjay Jain i/b Zohair & Co. for the Respondents.

...

CORAM: D.K.DESHMUKH, J.

DATED: 8TH SEPTEMBER,2005

P.C.:

1. This Notice of Motion is taken out by the

original Respondents Nos.1, 2 & 3 for setting aside the exparte order dated 29th August, 2003.

2. The exparte order was made by the court after permitting the Petitioner to effect substitute service by publication of the notice in the newspaper. According to the Applicant/ original Respondents Nos.1, 2 & 3, the order of substitute service was obtained from the court by the Petitioner SICOM by making misrepresentation that the address of the present Applicants who were Respondents Nos. 1, 2 & 3 was the only address available with them. According to the Respondent Nos. 1, 2 & 3 in some other proceedings between the parties in some other court, other address of the Respondent Nos. 1, 2 & 3 was known to the Petitioner SICOM.

3. Firstly, the order passed by the Court permitting substitute service is not under challenged before me. Secondly, a copy of that order is also not produced on record. The learned Counsel appearing for the Petitioner/SICOM has pointed out that the address on which notices were sent to the Respondents Nos. 1, 2 & 3 was the address given by them in the deed of guarantee. Therefore, I do not find any substance in

the submission made on behalf of the Respondents that the order of substitute service was secured against them by the Petitioner by any misrepresentation. In my opinion, the Court was perfectly justified in making the order of substitute service when the court found that the notices sent to the Respondents Nos. 1, 2 & 3 on the address which they themselves had furnished came back with an endorsement that they are not residing at that address.

4. The learned Counsel appearing for the Respondents Nos. 1, 2 & 3 relied on the judgment of the learned single Judge of this Court in the case of Shri.Lal Mohammed Mestry v/s. Shri.Abdul Sakur Abdul Gafoor & Anr., 2002(4) All MR 420 to contend that an order of substitute service cannot be made in a casual manner and the court can go into the validity of the order of substitute service, when the order seeking setting aside exparte decree is sought. I have found that the order of substitute service was validly passed and notice was also published in Freepress Journal. A bare statement made by the Respondents Nos. 1, 2 & 3 that they did not read "Freepress Journal", in my opinion, would not entitle them to have the decree passed against them set aside, especially considering

that the Petitioner is SICOM, which deals with public funds. This type of technical pleas cannot be allowed to be raised by the litigant, when public money is involved. Hence, the Notice of Motion is disposed of. Respondents Nos. 1, 2 & 3 are directed to pay as and by way of costs of this Notice of Motion Rs.25,000/- to the Petitioner/SICOM.

...